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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Werner Runft

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EXAMINER

TRUONG, THANH K

ART UNIT

PAPER NUMBER

3721

MAIL DATE

DELIVERY MODE

05/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/577,993	Applicant(s) RUNFT ET AL.	
	Examiner THANH K. TRUONG	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 29 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9,10,13,14,17,18,20,22,23,25 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9,10,13,14,17,18,20,22,23,25 and 27-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment received on January 29, 2008.
2. Applicant's cancellation of claims 1-8, 11, 12, 15, 16, 19, 21, 24 and 26 is acknowledged.
3. Examiner's note: in light of the Applicant's amendment, the rejection based on Ribani et al. reference is being reinterpreted (the revisions are underlines) as follow:

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9, 10, 12, 13, 14, 17, 18, 20 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ribani et al. (5,966,910) in view of Yamamoto et al. (5,018,335).

Ribani et al. discloses an apparatus comprising: a capsule delivery device (2), which has receptacles (1), each for one capsule, and having at least one capsule expulsion station (10), which includes

a capsule expulsion device (101) for axially expelling the capsules each out of their respective receptacle;

guide flaps (106), individually controllable by means of an actuating device (114) and pivotable with respect to a pivot shaft (110), which are each assigned to one

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capsule receptacle and each have two guideways (not number – each guideway located on each side (right and left sides) of the flap 106), triggerable by means of the actuating device, for the respective associated capsules, and

partitions, which separate the guideways of adjacent guide flaps from one another, wherein the partitions are each integrally formed with a respective guide flap (the guide flap 106 itself serves as the partition of the two guideways on both sides of the guide flap).

Ribani et al. discloses the claimed invention, but it does not expressly disclose the each of the guide flaps cooperate with two rows of capsule receptacles.

Yamamoto et al. discloses an apparatus comprises a plurality of rows of capsule receptacles to provide means to handle a larger volume of capsules and thus increasing productivity.

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified Ribani et al. by incorporating the multiple rows of capsule receptacle as taught by Yamamoto et al. to provide means to increasing production capability.

Ribani et al. modified by Yamamoto et al. further discloses:

Regarding claim 10, the guide flaps are supported on a common pivot shaft (110).

Regarding claims 13-14, the adjacent guide flaps are separated from one another across a gap which is defined by an annular shoulder in the bearing region of at least one of the adjacent guide flaps – it is construed that pivoting point (110) is a bearing as recited.

Regarding claims 17, 18 and 20, the expulsion device comprises a plurality of tappets (101) which are assigned one to each capsule receptacle (Figure 20).

Regarding claim 28, wherein the actuating device for the guide flaps cooperates with at least one inspection station for the capsules (column 8, lines 9-15).

Regarding claims 29 and 30, the adjacent back wall of one guide flap serves as a guide for any capsules operated in the adjacent guide flap – Fig. 1 clearly shows that adjacent wall of each chute (103) serves as a guide as recited in claims 29 and 30.

6. Claims 22, 23, 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ribani et al. (5,966,910) in view of Yamamoto et al. (5,018,335).

As discussed above, Ribani et al. modified by Yamamoto et al. discloses the claimed invention, but it does not expressly disclose that the guide flaps are triggered by a pneumatic cylinder.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have used an electric actuator as taught by Ribani et al. because Applicant has not disclosed that using pneumatic cylinder (instead of an electrical actuator) provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with an electrical actuator because an electrical actuator as taught by Ribani et al. would perform equally well.

Accordingly, the use of a pneumatic actuator, as recited in claims 22, 23, 25 and 27, is deemed to be a design consideration which fails to patentably distinguish over the prior art of Ribani et al.

Response to Arguments

7. Applicant's arguments filed January 29, 2008 have been fully considered but they are not persuasive.

8. In response to the Applicant's argument that "*the examiner is using hindsight when combining the Ribani et al and Yamamoto reference*". It appears applicant is attacking the individual merits of references used in the prior art rejection and is alleging that the examiner uses hindsight construction to come up with applicant's claimed invention. However, such attempt has been considered by the court improper. The prior art rejection under 35 USC 103 is based on combination of references taken as a whole. One cannot show non-obviousness by attacking references individually. *In re Keller*, 208 USPQ 871 (CCPA 1981). Furthermore, *In re McLaughlin*, 170 USPQ 209 (CCPA 1971) states that "[T]he test for combining references is not what the individual references themselves suggest but rather what the combination of the disclosures taken as a whole would suggest to one of ordinary skill in the art. Any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made and does not include knowledge gleaned from applicant's disclosure, such a reconstruction is improper[.]"

9. Applicant's arguments with respect to claims 22, 23, 25 and 27 have been considered but are moot in view of the revision of rejection (see paragraph 6 above).

10. In response to the Applicant's argument that:

"Applicants also feel that the examiner's statement of the rejection of claim 10 does not follow from the disclosure of Ribani et al. Since the lever 106 of the Ribani et al reference is interfulcrumed at 110, and is connected at 111 to the slotted end of lever 112, it would not be possible for the levers 106 of Ribani et al to be supported on a common support shaft. This interpretation is specifically supported by Ribani et al at column 8, lines 15-20, wherein Ribani et al describe how their door 106 is mounted and how it operates."

this is not found persuasive for the following reason: Ribani et al. discloses in column 8, lines 15-20 and Figure 20 clearly indicates that because each of the members (106) is pivoted via the "interfulcrumed" (110) they are able to move independently.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to THANH K. TRUONG whose telephone number is (571)272-4472. The examiner can normally be reached on Mon-Fri 9:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

tkk
May 7, 2008.

/Thanh K Truong/
Primary Examiner, Art Unit 3721.